Supreme Court, U.S.
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No. _____

In the

SUPREME COURT of the UNITED STATES

CHARLES L. GREEN
Petitioner

v.

ILLINOIS POWER COMPANY
Respondent

On Petition for Writ of Certiorari
To The Seventh Circuit Court of Appeal

PETITION FOR WRIT OF CERTIORARI

Charles L. Green
Petitioner, Pro se
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53pp

QUESTIONS TO BE PRESENTED:

Whether the lower courts erred in Granting Illinois Power Company's motion for summary judgment based on Local Rule 7.1(d).

Whether the lower courts erred by not considering Charles Green's argument about Local Rule 7.1(d) in his motions and briefs.

Whether the Appellate court, District Court and Illinois Power Company erred when applying and/or interpreting Illinois Power Company Policies and procedures and the collective bargaining agreement between Illinois Power Company and the International Brotherhood of Electrical Workers.

Whether the appellate court and the district court's decisions are sending bad messages to the American people.

Whether summary judgment was properly granted.

Whether Charles Green was given a fair chance to present his evidence (due process).

Whether the lower courts erred in holding a pro se litigant to the same or higher standards of perfection as attorneys.

Whether the appellate court erred by not publishing their opinion in the Official Reports.

Whether the lower courts erred in granting Illinois Power Company's motion for Summary Judgment when Illinois Power Company failed to comply with Local Rule 7.1 and the appellate court rules and other rules I may have over looked.

Whether the district court erred in denying Charles Green the opportunity to amend his pleadings.

Whether the lower courts erred by not examining the entire record for their decision.

Whether the lower courts erred by granting summary judgment when Illinois Power Company held on to all discovery material until a few weeks before filing for summary judgment

Whether the lower courts erred by not considering Charles Green's Petition for Rehearing

Whether the lower courts erred by denying Charles Green Counsel.

Whether the lower courts erred by arguing for Illinois Power Company in their decisions.

Whether the lower court's rulings were inconsistent with other lower courts, the Supreme Court and their own past decisions.

Whether the lower courts erred by not considering the fact that Illinois Power Company's discovery material was not clearly marked.

Whether the lower courts erred by not considering evidence that Illinois Power Company had in their possession and Charles Green did not have access to.

PARTIES TO PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

Charles Green, Petitioner, Pro se, furnishes the list of parties in compliance with Rule 29.6. Illinois Power Company is a corporate entity, organized and existing under the laws of Illinois.

A. Parties

The following is a list of parties who appeared in the united States Court Of Appeal and the United States District Court for the Central District of Illinois: Charles Green (Plaintiff-Appellant), Illinois Power Company (Defendant-Appellee), Illinova Corporation (Defendant)

B. Parent

Illinova Corporation is the parent company of Illinois Power Company. Charles Green is a Pro se litigant and has no parent company.

C. Counsel

Charles Green, of 520 Monterey, Danville Illinois argued Pro se.

Bradley Johnson, Attorney of Decatur Illinois argued for Illinois Power Company.

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OPINIONS BELOW

The opinion of the Court of Appeal is marked "UNPUBLISHED ORDER", "Not to be cited per Circuit Rule 53", App A, Judgment App B, Order denying petition for rehearing with suggestion for rehearing en banc App H. Order granting an extension of time, District Court Orders App C, App D, App E, App F, App G.

JURISDICTION

On August 14, 1998, an Order by Mag. Judge David G. Bernthal found judgment for Illinois Power. The appellate court erroneously affirmed the district courts erroneous decision on April 26, 1999. Charles Green has not filed an affidavit of intent to seek review. Charles Green has filed a petition for rehearing with suggestion for rehearing en banc on May 10, 1999. The petition for rehearing with suggestion for rehearing en banc was denied on June 11, 1999. Charles Green was granted an extension of time to file petition for Writ of Certiorari on September 8, 1999. Petition for Writ of Certiorari is now due on November 8, 1999.

The question presented was preserved in the Illinois courts at the earliest opportunity. Some did not arise until Charles Green received the court of appeal's opinion. Charles Green thereupon sought rehearing, arguing that the court of appeal had erred for numerous reasons and that its decision resulted in fundamental unfairness and a violation of the equal protection provisions of the United States Constitution. Some questions were not raised until now due to lack of time, knowledge and skills.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND OTHER RULES AND ATHORITIES INVOLVED IN PERTINENT PART

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part "[n]o State shall. . . deny to any person within its jurisdiction the equal protection of the laws."

Rule 6. Time: When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefore is made before the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), (d) and (e), 60(b), and 74(a), except to the extent and under the conditions stated in them.

Local Rule 7.1 "Local Rule 7.1(d) does not apply to pro se litigants"

Rule 56, Summary Judgment. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Rule 81. Applicability in General. (1) These rules do not apply to prize proceedings in admiralty governed by Title 10, USC, §§ 7651—81. They do not apply to proceedings in bankruptcy or proceedings in copyright under Title 17, USC, except in so far as they may be made applicable thereto by rules promulgated by the supreme court of the United States.

They do not apply to mental health proceedings in the United States District Court for the District of Columbia.

Rule 83. Rules by District Courts; Judge's Directives. (1) Each district court, acting by a majority of its district judges, may, after giving appropriate public notice and an opportunity for comment, make and amend rules governing its practice. A local rule shall be consistent with – but not duplicative of – Acts of Congress and rules adopted under 28 U.S.C. §§ 2072 and 2075, and shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments shall, upon their promulgation, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.

> (2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

FRCP 15 " a party may amend the party's pleading only by leave of court" "leave shall be freely given".
Supreme Court Rule 14 "If the Clerk determines that a petition submitted timely and in good faith is in form that does not comply with this rule or Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition received no more than 60 days after the date of the Clerk's letter will be deemed timely".

Haines v. Kerner, 404 U.S. 519 (1972). Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for

the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears [404 U.S. 519, 521] "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944). Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof.

U.S. 10TH Circuit Court of Appeals Murray v Archambo
We review the district court's ruling in this case for abuse of discretion. See Miller v. Department of Treasury, 934 F.2d 1161, 1162 (10th Cir. 1991) (discussing standard of review applicable to dismissal for failure to comply with a similar local rule); Hancock v. City of Okla. City, 857 F.2d 1394, 1395-96 (10th Cir. 1988) (same). Our jurisdiction over this appeal arises from 28 U.S. C. § 1291. Because we agree with Murray that the district court's ruling was in error, we reverse and remand for further proceedings in the case. On remand, the district court should consider defendant's motions to dismiss, and Murray's responses thereto, on their merits. Further, the court should consider granting Murray leave to amend his complaint. Fed. R. Civ. P. 15 provides that leave to amend "shall be freely given." This is especially true here because Murray is proceeding pro se. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (pro se pleadings should be liberally construed); Reynoldson v. Shillinger, 907 F.2d 124, 125-26 (10th Cir. 1990) (district court should not dismiss a pro se complaint without leave to amend if the defects can be cured by amendment).

Boag v. MacDougall, 454 U.S. 364 (1982). The court of appeals' ground for dismissing the complaint was erroneous as

a matter of law. Federal courts must construe inartful pleading liberally in pro se actions, Haines v. Kerner, 404 U.S. 519, and, so construed, the complaint here states a cause of action. Construing petitioner's inartful pleading liberally, as Haines v. Kerner, 404 U.S. 519 (1972), instructs the federal courts to do in pro se actions, it states a cause of action. See Wolff v. McDonnell, 418 U.S. 539, 555-572 (1974). On the basis of the record before us, we cannot find a sufficient ground for affirming the dismissal of the complaint.*

County of Los Angeles v. Kling, 474 U.S. 936 (1985) "The district court's findings are clearly erroneous and in many instances are inconsistent." "That decision not to publish the opinion or permit it to be cited-like the decision to promulgate a rule spawning a body of secret law-was plainly wrong."

John Giannopoulos v. Brach & Brock Confections, Inc., an Illinois Corporation, No. 96-2230 (7th Cir.). We review the district court's decision to grant sum-mary judgment de novo (e.g. Sborn Transition Corp. v. Security Ins. Co. of Hartford, 1997 WL 82353, *3 (7th Cir. Feb. 27, 1997)), Construing the evidence and any infer-ences that reasonably may be drawn from it in light most favorable to the party opposing summary judgment, in this case Giannopoulos (Anderson v. liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 2513 (1986); Mat- sushita Elec. Indus. Co. v. Zenith Radio Corp, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED.R. CIV. P. 56 (c) Once the party seeking summary judgment shows that there is no genuine issue of material fact requiring a trial, then the non-movant must identify specific evidence re-vealing that there is such an issue. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23,

106 S. Ct. 2548, 2552 (1986); DeLuca v. Winer Indus., Inc., 53 F.3d 793, 796-97 (7th Cir. 1995).

Lenzy McCullough v. Vernon L. Horton, Clerk; Cross County, Arkansas; State of Arkansas No. 95-1386. We review the District Court's dismissal for an abuse of discretion. See Denton v. Hernandez, 112 S. Ct. 1728, 1734 (1992). Although allegations in a pro se complaint are entitled to a liberal construction, Haines V. Kerner, 404 U.S. 519, 520 (1972) (per curiam), the complaint may be dismissed as frivolous under SS 1915 (d) if it is "based on an indisputably meritless legal theory" or if the factual contentions are "clearly baseless." Neitzke v. Williams, 490 U.S. 319, 327 (1989); see also Robinson V. Cavanaugh, 20 F.3d 892, 893 (8th Cir. 1994) (per curiam).

> A liberal construction of McCullough's pleading permits an inference that the court reporter filed a transcript with the court on September 4, 1994, and that Horton failed to provide McCullough with this transcript. Based on this interpretation of the complaint, the District Court abused its discretion in dismissing McCullough's claim against Horton for equitable relief, for which Horton does not enjoy absolute immunity. See Rogers v. Bruntrager, 841 F. 2d 853, 856 n.3 (8th Cir. 1988).

Matly v. Grasselli Chemical Co., 303 U.S. 197 (1938) Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants.

Baldwin County Welcome Center v. Brown, 466 U.S. 147 (1984). JUSTICE STEVENS also suggests that we should be more solicitous of the pleadings of the pro se litigant. In an order entered on May 7, the Magistrate denied the motion for appointment of counsel. The Magistrate observed at the outset that under applicable Fifth Circuit cases, he should consider.

"'the merits of the plaintiff's claim, the plaintiff's efforts to obtain counsel, and the plaintiff's financial ability to retain counsel." "In doing so Courts are required to 'be sensitive to the problems faced by pro se litigants and innovative in their responses to them"

> Rule 8(f) provides that "[a]ll pleadings shall be so construed as to do substantial justice." We frequently have stated that pro se pleadings are to be given a liberal construction. E.g., Haines v. Kerner, 404 U.S. 519 (1972). If these pronouncements have any meaning, they must protect the pro se litigant who simply does not properly denominate her motion or pleading in the terms used in the Federal [466 U.S. 147, 165] Rules. If respondent was not pleading for relief in the District Court, one wonders what the majority thinks she was doing there.

Conley v. Gibson, 355 U.S. 41 (1957) 9 Following the simple guide of Rule 8 (f) that "all pleadings shall be so construed as to do substantial justice," we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is a facilitate a proper decision on the merits. Cf.Maty v. Grasselli Chemical Co., 303 U.S. 197.

Bridgeforth v Ward. To the extent that the district court may have relied on Local Rule 7.1 to dismiss the petition, without finds, under these circumstances, it abused its discretion. See, e.g., id. At 1167. The rule by its very terms makes dismissal discretionary, and we have held that in such circumstances district courts must consider"(1) the degree of actual prejudice to the defendants; (2) the amount of interfernce with the judicial process; and (3) the culpability of the litigant."

Murray v. Archambo, 132 F.3d 609,611 (10th Cir. 1998) (quoting Hancock v. City of Oklahoma City, 857 F. 2d 1394, 1396 (10th Cir. 1988)); see also Green v. Dorrell, 969 F.2d 915, 917 (10th Cir. 1992) (citing Meade v. Grubbs, 841 F.2d 1512, 1519-22 (10th Cir. 1988)). These three factors are weighed against "the judicial system's strong predisposition to resolve cases on their merits." Green, 969 F.2d at 917; see also Murray, 132 F.3d at 611; Miller v. Department of Treasury, 934 F.2d 1161, 1162 (10th Cir. 1991);Meade, 841 F.2d at 1520. There is no indication that either the magistrate judge or the district court conducted any such analysis. "Dismissal is a harsh sanction and should be resorted to only in extreme cases." Meade, 841 F.2d at 1520 (quoting Meeker v. Rizley, 324 F.2d 269, 272 (10th Cir. 1963)). In Meade we held that even where a pro se plaintiff had actual notice of a similar local rule (giving 15 days to respond to a motion), dismissal with prejudice for violation of the rule was an abuse of discretion absent a "clear record of delay or contumacious conduct."

No. 96-4142 SANDRA M. SPEER, V. RAND MCNALLY & COMPANY, a Delaware corporation "The continuing violation doctrine allows a plaintiff to get relief for a time-barred act by linking it with an act that is within the limitation period. For purposes of the limitations period, courts treat such a combination as one continuous act that ends within the limitations period. "Selan v. Kiley, 969 F.2d 560, 564 (7th Cir. 1992). "A continuing violation theory requires at least one viable charge within the appropriate limitations period." EEOC v. Harvey L. Walner & Assoc., 91 F.3d 963, 969 (7th Cir. 1996) (citations omitted). "the purpose of permitting a plaintiff to maintain a cause of action on the continuing violation theory is to permit the inclusion of acts whose character as discriminatory acts was not apparent at the time they occurred." Doe v. R. R. Donnelly & sons Co., 42 F.3d 439, 446 (7th Cir. 1994)

STATEMENT OF THE CASE

On July 17, 1997, Charles Green filed a suit against Illinois Power Company aka Illinova. Charles Green's Equal Employment Opportunity Commission (EEOC) charge alleges several instances of discrimination. Charles Green alleges that he was wrongfully denied an electronic technician position located in Illinois Power's Belleville Service Area. Charles Green was not allowed to complete the hiring process for shift technician position located at the Baldwin and Wood River Power Plants. Charles Green was treated less favorable when it came to leave of absence.

Charles Green filed a request for counsel on 7-21-97. The District Court denied Charles Green the opportunity to be represented by counsel on 8-19-97. Charles Green request jury trial also on 10-7-97 denied on 8-14-98. Charles Green request to amend pleadings and additional discovery on 2-17-98 also denied 3-25-98. On 3-6-98 Illinova filed a motion for summary judgment. Charles Green filed a motion for extension of time on 3-23-98, denied on 3-25-98. Summary judgment was granted on 5-14-98 based on local rule 7.1(d), which does not apply to pro se litigants. Local Rule 7.1 "local rule 7.1(d) does not apply to pro se litigants"

At this time, Charles Green still have not received discovery material from Illinois Power Company. U.S. 10TH Circuit Court of Appeals Murray v Archambo "Fed. R. Civ. P. 15 provides that leave to amend "shall be freely given." This is especially true her because Murray is proceeding pro se."

On May 26, 1998 Illinois Power Company, after holding on to all discovery material issued Charles Green over four thousand pages of documents. On July 2, 1998, Illinois Power filed a motion for summary judgment. On July 2, 1998, Charles Green started his vacation and returned on or around July 10, 1998. On July 13,1998, Charles Green, applying Local Rule 6.1, Supreme Court rules 13.5, 14.5 and

FRCP 6. filed a motion to extend time to respond to the motion for summary judgment and to sort through his evidence and the 4,000 documents he received from Illinois power company. Charles Green knew that he could not properly respond to this motion for summary judgment in the remaining six days of the 14-day deadline. On July 16, 1998, Charles Green filed a response to Illinois Power's motion for summary judgment. Since Charles Green had no idea if his continuance would be granted he had to file what he had compiled. Charles Green requested a continuance so that he could comply with the rules, or have a fairer chance to comply with the rules and sort through over 7,000 documents and additional 1500 pages in filing. See brief for Appellant and Affidavit of Bradley Johnson dated July 13, 1998. The request for extension of time was timely filed. Charles Green knew that if he did not respond within the 14-day deadline without a continuance, the court would find judgment for Illinois Power Company. The district court did not respond to Charles Green's request for an extension of time in a timely manner or before the deadline for Charles Green's response to summary judgment. On July 23, 1998, Mag. Judge David G. Bernthal finding Charles Green's motion to extend time mooted since he had filed a response. Judge David G. Bernthal had not responded to my request for a continuance in a timely manner. Charles Green was forced to file his response before the 14-day deadline as it was. FRCP 83 "A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement".

On July 31, 1998, Illinois Power filed a motion to strike my response to summary judgment. Charles Green filed a continuance to extend time to respond to Illinois Power's filings on August 5, 1998. On August 13, 1998, motion to extend time was denied by Mag. Judge David G. Bernthal. On August 13-1998, Charles Green filed a response to Illinois Power's filings. On August 14, 1998 an Order by

Mag. Judge David G. Bernthal found judgment for Illinois Power and based his decision on Local Rule 7.1(d) which does not apply to pro se litigants. It seems that Judge Bernthall searched through the record and found that Charles Green did not comply with Local Rule 7.1(d) which does not apply to pro se litigants However Judge Bernthall excluded the fact that Illinois Power Company failed to comply to the same rules. Judge David G. Bernthall held Charles Green to higher standards of perfection as attorneys. See Judge Bernthall has further demonstrated his bias against pro se litigants by refusing to follow the U. S. Supreme Court's guidelines regarding pro se pleadings set fourth in Haines v. kerner, 92 S. Ct. 594. In Kerner, the Supreme Court held that pro se pleadings are not held to the same high standards of perfection as attorneys. FRCP 56© provides that summary judgment

> "shall be rendered forthwith if...there is no genuine issues as to any material fact and the moving party is entitled to a judgment as a matter of law." See also Boag v. MacDougall, 454 U.S. 364 (1982).

Charles Green has now filed an appeal of the August 14, 1998 Order. No where does Illinois Power Company or the district court show where Illinois Power Company meets the requirements of FRCP 56. It appears that summary judgment would have been granted no matter what Charles Green did. Charles Green has appealed to the appellate court. Charles Green shows the court that Illinois Power Company has failed to comply with Local Rule 7.1 and Rules of the Appellate Court. These arguments are apparently ignored. The appellate court has now issued an order affirming the district courts decision to grant Illinois Power Company's motion for summary judgment. The appellate court based their decision on Local Rule 7.1(d). Local Rule 7.1(d) does not apply to Pro se litigants. Charles Green has not been giving due process. Seeking due process Charles Green filed a petition for rehearing and suggestion for rehearing en banc. It seems that no one had time to even look at this case. Charles Green

raised these issues listed above in Plantiff-Appellant's Motion to Strike Defendant-Appellee's Brief of Appellee pages 2-13, Notice of Appeal 1, 2, 13, 21, Reply Brief of Plaintiff Appellant pages 3, 5-6, 8-11, 13-17, 19-21, Petition for rehearing en banc and suggestion for rehearing pages 4-21 and Affidavit of Charles Green in the District Court ". The U.S. Constitution guarantees me the right to a fair trial. I also have the right to a jury trial and the right to be represented by counsel. I will have a fair trial if someone who is skilled in the legal profession represents me. The defendant can not deny me what has been laid out by the United States Constitution". Charles Green is now appealing to the United States Supreme Court because Justice has not been served in the lower courts. See Local Rule 7.1, FRCP 56, Local rule 83, FRCP 83 Brief of Appellant, Reply Brief of Appellant, Defendant's Motion for Summary Judgment, Order by Judge Bernthall, Order by the Appellate Court, Petition for rehearing, Haines v. Kerner, Exhibit SJ p.1 Exhibit SK p.4.

REASONS FOR GRANTING WRIT

I began working with Illinois Power Company January 7, 1991. On or around January 30, 1991, I joined the International Brotherhood of Electrical Workers (IBEW) Local 51. Shortly after I started working with Illinois Power Company, as I begin to explore what I thought and was told were equal employment opportunities they begin to create a pattern of discrimination against me. Illinois Power Company and the lower courts have erred in determining the application of the company policies. These personnel policies were not applied fairly and consistently. See Deposition P. 1-100, Brief for Appellant p. 6-27, Reply Brief p. 5-21, and pleadings p. 1-35.

I. PATTERN OF DISCRIMINATION

1. Since January 7, 1991, Illinois Power Company has had several open under utilized positions which Charles Green was qualified for and applied for these positions were given to less-qualified white employees. These positions include electronic technician positions, which Charles Green applied for by signing the posted bid sheet. The interviewing supervisor never contacted or considered Charles Green. The positions were given to Bill Burkhart on or around January 1, 1992, whose background is in automotive repair; Patrick Altoff on October 10, 1994, whose background is in the metershop as an E & G Meter-Changer. David Cooper on January 9, 1995 whose background is in the meter shop and David Ellis on April 10, 1995 whose background is in the meter shop. These very positions management has stated that Charles Green should have been awarded these positions and that Charles Green had to file a grievance to get them. There was an open Local 702 Belleville position, this position was filled by a Local 309 Employee from Sparta service area whose background is in the line department. These employees did not have the negotiated qualifications for the electronic

technician position. Charles Green is more qualified for the substation electronic technician position than each of these employees. The above employees do not have the necessary skills for the position (industrial experience in a substation). Charles Green has not been given a nondiscriminatory reason why he was not selected or considered for the electronic technician position. See Deposition P. 1-100, Brief for Appellant p. 6-27, Reply Brief p. 5-21, pleadings p. 1-35 Kline v TVA, App. 3, App. 4.

2. In 1995, I applied for various specialist (substation) position, also known as Substation Inspectors. The position was given to someone in the Gas Department with no Substation experience. The defendant neglected to evaluate all applications fairly and consistently. See Deposition P. 1-100, Brief for Appellant p. 6-27, Reply Brief p. 5-21, pleadings p. 1-35.

3. Since July 1996, I was denied the shift technician position approximately ten times which also mean that I was denied an interview ten times, I was denied the opportunity to take the POSS test at least ten times. has no generating experience and no formal education Charles Green has a higher education than these employees, according to Illinois Power Company that alone makes you more qualified if you are white. See Deposition P. 1-100, Brief for Appellant p. 6-27, Reply Brief p. 5-21, pleadings p. 1-35 . Kline v TVA, App. 3.

4. Since 1994, I have applied for various information systems open positions and they are as follows: Information Networking Analyst INFO0001123, INFO000121, INFO000119, Network System programmer INFO000101, Information network Specialist INFO000105, Information Networking INFO000102, Information Networking

Operations Specialist. My application stays active for one year. One of the positions was given to Mike Driskell who has not had any formal training in the information system field. I was more qualified for the position. Even when I received my degree, I was denied these positions. The positions were given to less qualified employees. Illinois Power is waiving the nepotism rule to recruit more white friends and family members. See Deposition P. 1-100, Brief for Appellant p. 6-27, Reply Brief p. 5-21, pleadings p. 1-35 Kline v TVA, App. 3-App. 7X, No. 96-4142 SANDRA M. SPEER, V. RAND MCNALLY & COMPANY, a Delaware corporation

> "The continuing violation doctrine allows a plaintiff to get relief for a time-barred act by linking it with an act that is within the limitation period. For purposes of the limitation period, courts treat such a combination as one continuous act that ends within the limitations period".

5. Illinois Power Company claims that Charles Green argument about him being treated less favorable than his coworkers when it comes to time off is time barred. See EEOC v. Harvey Walner & associates, 91 F3d 963, 969 (7th Cir. 1996), Speer v. Rand. Given this pattern dating back to about 1991 and other issues during the same time frame as this claim there is no way that Illinois Power Company should been granted summary judgment. See Deposition P. 1-100, Brief for Appellant p. 6-27, Reply Brief p. 5-21, pleadings p. 1-35, Walker v Mortham, Kline v TVA and FRCP 56. Charles Green has also attempted to bring out these issues and others such as workers compensation and training by filing motions to amend the pleadings. See Motion to amend pleadings. The lower courts erred by not allowing Charles Green the opportunity to amend his pleadings. FRCP 15 provides that leave to amend "shall be freely given". See Murray v. Archambo,

Sandra M. Speer v. Rand McNally & Company. "The moving party has the burden of providing documentary evidence to show the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U. S. 317, 106 S. Ct. 2548, 91 l.Ed.2d 265 (1986). I have also shown and argued that this is not an isolated incident and that these acts by Illinois Power Company are company-wide. George May, Lola Smith, and John Watters, are just a few of the many employees who claim to have experienced some form of discriminations while working at Illinois Power Company. Illinois Power Company has not presented evidence to show the absence of a genuine issue of material fact; all evidence in this case favor Charles Green. See motion for summary judgment evidence Tab1-Tab 49 and evidence in support of Affidavits Tab a-f p. 1. See Sandra M. Speer v. Rand McNally & Company, Kline v TVA, Murray v. Archambo.

6. Charles Green did not wish to be discriminated against, that was Illinois Power Company's choice. Charles Green also has never wished to represent himself in the lower courts or in this court, but since he was forced to do so wishes a fair chance to represent himself. Charles Green has requested counsel from the lower courts on july 21, 1997 and the request was denied. Seerequest for appointment of counsel 2. "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants." Matly v. Grasselli Chemical Co., 303 U.S. 197(1938)

   Baldwin County Welcome Center v. Brown, 466 U.S. 147 (1984). JUSTICE STEVENS also suggests that we should be more solicitous of the pleadings of the pro se litigant. In an order entered on May 7, the Magistrate denied the motion for appointment of counsel. The Magistrate observed at the outset that under

applicable Fifth Circuit cases, he should consider. "'the merits of the plaintiff's claim, the plaintiff's efforts to obtain counsel, and the plaintiff's financial ability to retain counsel." "In doing so Courts are required to 'be sensitive to the problems faced by pro se litigants and innovative in their responses to them"

II. SUMMARY JUDGEMENT AND THE AFFIRMATION OF THE APPELLATE COURT WAS ERRONEOUSLY GRANTED.

Plaintiff-Appellant Charles Green alleges that he was not promoted or allowed to transfer to certain positions because of his race and that he was subjected to unequal terms and conditions. Charles Green was not allowed to complete the hiring process (i.e., not allowed to take the required POSS test for the shift technician position and not allowed an interview) because of his race. See Griggs v. Duke Power. Charles Green was not given the same options of taking time off that was given to white coworkers because of his race. In Charles Green's Affidavit paragraph 12 states 'Hiring of bargaining unit power plant, substation and systems employees have not been consistent with Illinois Power Company collective bargaining agreements". See Affidavit of Steve Rasor and James Dodson. Charles Green applied for a shift technician position and an electronic technician position; Charles Green was qualified for the positions and had seniority in the same local for the shift technician and departmental seniority for various electronic technician positions but was denied the positions. The positions were given to white employees. See Title VII. Illinois Power claims that Charles Green's substation experience has nothing to do with the power plant's Shift Technician Positions. The job description/ job posting clearly states in its requirements switchyard. Switchyard and

substations are the same things. Therefore the reason given by Illinois Power Company is a lie and the real reason is race discrimination. See Title VII. The district court and the appellate court has made a critical error by making a final decision based on Local Rule 7.1 (d) which does not apply to pro se litigants. See Bridgeforth v Ward. To the extent that the district court may have relied on Local Rule 7.1 to dismiss the petition, without finds, under these circumstances, it abused its discretion. See, e.g., id. At 1167. Charles Green attempted to give the Appellate Court a chance to properly do their job by filing a petition for rehearing because the opinion of the Appellate court over looked and/or misapprehended some critically important issues. A petition for rehearing should identify "the points of law or fact which in the opinion of the petitioner[s] the court has overlooked or misapprehended." Rules 40(a), Federal rule of Appellate Procedure; See 9 Moore's Federal Practices § 240.02(2), at 6 (2d ed. 1996). As discussed below, in the instant appeal a rehearing should be granted because "the court has over looked or misconceived a material question in the case." Louisell & Dednan, Rehearing in American Appellate Courts, 25 F.R.D. 143, 146 1960), see., App. 1 - App. 11, It is essential that this oversight and/or misconception be remedied by rehearing. Indeed, the "basic postulate of rehearing must be that a court which is final must also be careful; it must admit of the possibility that error may occur and that original decisions may not always be the best possible decision." Id. At 144 (emphasis added). See also USA vs. Dennis K. Kananahele, Gordon Ka'Aihue. Plaintiff Appellant Charles Green clearly raised and argued these distinct issues in his Reply Brief p. 3,5,6,8,9,10,11,13,14-17 and motion to Strike Brief for Appellee p. 1-8.

The district court erred in granting Illinois Power Company's motion for summary judgment based on Local Rule 7.1(d). See Reply Brief of Plaintiff-Appellant p. 9-22 and Plaintiff-Appellant's Motion to Strike Defendant-Appellee's Brief p. 3-

12, Drake v Delta Air Lines, Inc. Haines v. Kerner. Charles Green only has to come forward with specific evidence once Illinois Power Company has met their burden; Illinois Power Company has not met their burden. See motion for summary judgment pp. 1-6 and the district court's order granting summary judgment pp. 1-6 App. 1 - App. 7. The burden of production imposed by Rule 56 requires the moving party to make a prima facie showing that it is entitled to summary judgment. 10A Wright 2727. The party moving for summary judgment may satisfy Rule 56's burden of production in either of two ways. First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. See 10Awright 2727, pp.130-131; Louis, Federal Judgment doctrine: A Critical Analysis, 83 Yale L. J. 745, 750 (1974), App. 1 – App. 11. If the moving party has not met its initial burden of production, its motion for summary judgment should be denied, and the court need not consider whether the moving party has met its ultimate burden of persuasion. Illinois Power Company has not met its initial burden of production. [477 U.S. 317,333]. See motion for summary judgment 1-4, App. 3 - App. 7. Once the moving party has met its burden, the opposing party must come forward with specific evidence, not mere allegations or denials of the pleadings, which demonstrates that there is a genuine issue for trial. Holand v. Kilquist, 833 F2d 639 (7th Cir. 1987). The District Court failed to examine the evidence to make its final decision instead it relied on Illinois Power's mooted motion to strike Charles Green's response to summary judgment p. 1-4. See District Courts Order p. 1-6 and Illinois Power's motions to strike Charles Green's response to summary judgment, . [1] Federal Civil Procedure □ 2552, 170ak2552. Lenzy McCullough v. Vernon L. Horton, Clerk; Cross County, Arkansas; State of Arkansas. See App. 1. - App. 12.

Summary judgment is not a vehicle for resolving factual disputes; district court's role is limited in deciding based on evidence of record, whether there is any material dispute of fact that requires trial. Fed. Rules Civ. Pro. Rule 56, 28 U.S.C.A. Bridgeforth v Ward. The rule by its very terms makes dismissal discretionary, and we have held that in such circumstances district courts must consider "(1) the degree of actual prejudice to the defendants; (2) the amount of interference with the judicial process; and (3) the culpability of the litigant." Murray v. Archambo, 132 F.3d 609,611 (10th Cir. 1998) (quoting Hancock v. City of Oklahoma City, 857 F. 2d 1394, 1396 (10th Cir. 1988)); See also Green v. Dorrell, 969 F.2d 915, 917 (10th Cir. 1992) (citing Meade v. Grubbs, 841 F.2d 1512, 1519-22 (10th Cir. 1988)). These three factors are weighed against "the judicial system's strong predisposition to resolve cases on their merits." Green, 969 F.2d at 917; see also Murray, 132 F.3d at 611; Miller v. Department of Treasury, 934 F.2d 1161, 1162 (10th Cir. 1991); Meade, 841 F.2d at 1520. There is no indication that either the magistrate judge or the district court conducted any such analysis. "Dismissal is a harsh sanction and should be resorted to only in extreme cases." Meade, 841 F.2d at 1520 (quoting Meeker v. Rizley, 324 F.2d 269, 272 (10th Cir. 1963)). In Meade, we held that even where a pro se plaintiff had actual notice of a similar Local Rule (giving 15 days to respond to a motion), dismissal with prejudice for violation of the rule was an abuse of discretion absent a "clear record of delay or contumacious conduct." See App. 5.

A. The Appellate Court erred in applying Local Rule 7.1(d) to a pro se litigant to determine their decision to affirm the district court decision to grant Illinois Power Summary Judgment when Local Rule 7.1(d) does not apply to pro se litigants. App. 5. FRCP 81 Applicability in General

> "(1) These rules do not apply to prize proceedings in admiralty governed by Title 10, USC, §§ 7651—81. They do not apply to proceedings in bankruptcy or

> proceedings in copyright under Title 17, USC, except in so far as they may be made applicable thereto by rules promulgated by Supreme Court of the United States. They do not apply to mental health proceedings in the United States District Court for the District of Columbia."

Since FRCP 81 does not apply to mental health proceedings, certain bankruptcy proceedings and prize proceedings in admiralty govern by Title 10, is it fair for the district court to apply them anyway? Local Rule 7.1 has several parts 7.1a - 7.1f. Charles Green has complied with each part of Local Rule 7.1 that applied to him. Local Rule 7.1d does not apply to Charles Green or any other Pro se litigant; therefore, Charles Green is not required by law to comply with this section of Local Rule 7.1. This 7.1 rule cannot get any clearer than "Local Rule 7.1d does not apply to Pro se litigants". See App. 5. However, this 7.1 rule in its entirety does apply to trained attorneys such as Illinois Power Company's attorney(s). Charles Green has argued in the lower courts that Illinois Power Company failed to comply with Local Rule 7.1 and Charles Green's allegations must be taken as true. The District Court should have denied Illinois Power Company's motion for summary judgment and found in favor of Charles Green. Exceptions were made for Illinois Power Company for not complying with Local Rules 7.1. Judge Bernthall freely searched the record to find error in Charles Green's Response to Illinois Power's motion for Summary judgment but failed to even search Illinois Powers motion for summary judgment for errors. See TitleVII, App. 3 - App. 12, Lenzy McCullough v. Vernon L. Horton, Clerk; Cross County, Arkansas; State of Arkansas, Reply Brief of Plaintiff-Appellant p. 9-22 and Plaintiff-Appellant's Motion to Strike Defendant-Appellee's Brief p. 3-12, Drake v Delta Air Lines 2nd

circuit, Inc. Haines v. Kerner, 404 U.S. 519 1972 No. 70-5025, Dennett v. Hogan, 414 U.S. 12(1973), no. 72-6449, McDonnell Douglas Corp. v, Green, 411 U.S. 792,802 (1973 Murray v Archambo.

B. The Appellate court erred by not considering Charles Green's argument about Local Rule 7.1(d) in his motion to strike brief for appellee and reply brief for appellant. See order by the Appellate Court dated April 26, 1999 affirming the district court's decision. Since Local Rule 7.1 does not apply to Pro se litigants; the Appellate Court, Illinois Power Company and the district court are in error. Plaintiff Appellant Charles Green clearly raised and argued these next distinct issues in his reply brief and motion to strike Brief pp. For Appellee 3,5,6,8,9,13,15,16 and Reply brief p. 2-8. Drake v Delta Air Lines 2nd circuit, Inc. Haines v. Kerner, 404 U.S. 519 1972 No. 70-5025, Dennett v. Hogan, 414 U.S. 12(1973), no. 72-6449, Hollis B. Memembers v Michael Paige, Et Al., 7th Circuit. Burlington Industries, Inc., Petioner v. Kimberly B. Ellerth on Writ of Certiorari to the United States for the Seventh Circuit, Exhibit SA-SG p. 1-25, Denton v. Hernandez, 504 U. S. 25 (1992), Murray v Archambo, App. 5.

C. Whether the Appellate Court, District Court and Illinois Power Company erred when applying and/or interpreting company policies and procedures and the collective bargaining agreement between Illinois Power Company and the international Brotherhood of Electrical Workers, Drake v Delta Air Lines 2nd circuit, Inc., Haines v. Kerner, 404 U.S. 519 1972 No. 70-5025, Dennett v. Hogan, 414 U.S. 12(1973), no. 72-6449, Hollis B. Memembers v Michael Paige, Et Al., 7th Circuit. Burlington Industries, Inc., Petitioner v. Kimberly B. Ellerth on Writ of Certiorari to the United States for the Seventh Circuit, , Murray v Archambo.

Charles Green applied through the transfer procedure with an approved transfer request as required by local management, for shift technician positions located in the Baldwin and Wood River Power stations for which he had the qualifications. See., Exhibit rr A22-24, A50, A48, Exhibit V p. 1-6 and A36, A37.

Charles Green was denied these underutilized positions and the positions were given to white employees. Illinois Power Company's Affirmative Action Policy states that Illinois Power Company will recruit and fill underutilized position with qualified minorities. See Exhibit ww, Exhibit rr, exhibit oo, exhibit qq, Exhibit tt, Exhibit ss, Exhibit pp, A27, A28, Exhibit I p. 1-12 and petition for rehearing. Illinois Power's proffered reason for denying Charles Green the positions was a lie. See, reply brief p. 1-25, brief of Appellant p. 1-30.

The Order of April 26 1999, by the appellate court argues for Illinois Power Company that Charles Green has missed over 32 days of work in addition to vacation time off during the previous two years. If the employee has a satisfactorily performance record for the prior eighteen (18) months he is eligible for transfers, not two or more years. According to Illinois Power Company's policies, the test should have been administered before the receiving area or power plant receives a copy of the files. This test helps establish eligibility for the shift technician positions. If you pass the POSS test you are eligible for an interview. See petition for rehearing p. 1-21, Exhibit SI p.1-4

David Long's absence record dates from 1-24-94 to 11-8-95 indicating absent time of 178.5 hours and 21days. Gregory Boyd's absence record dates from 1-27-94 to 10-13-95 indicating absent time of 221.1 hours and 26days. Charles Green's absence record dates from 2-1-94 to 6-26-96. In these situations they are comparing almost three years for Charles Green to around two years for David Long and Gregory Doyd. See petition for rehearing p. 1-21, App. ,3 App. 4.

The shift technician position opened in July 1996. According to the collective bargaining agreement and Illinois Power Company's personnel policies, an employee must have worked satisfactorily including absence record for the prior 18 months before he/she is eligible for transfer or promotion. If satisfactory, local management may approve the employee's transfer request. See policies and procedures on how to fill union jobs. Since 1991, local management approved all of Charles Green's transfer requests. See exhibit 1-49. Testing for the shift technician position will be given before the power plant's management interviews the employees. If the employee does not pass the test then there is no need for an interview. Charles Green was never given the opportunity to take the POSS test. From January 1995 to June 1996, Charles Green has been absent 13 days. Christopher Thoms in an 18-month period prior to getting an electronic technician position located in the Belleville area had been absent over 15 days. The electronic technician position was open in Belleville Local 702. Christopher Thoms was in Local 309 and located in Sparta. Christopher Thoms would have to fill out a transfer request to go from one location to another; the same applies to Charles Green. This means that there should have been two transfer requests for the Belleville Local 702-substation electronic technician position. Neither Chris Thoms nor Charles Green has bid rights out side their locals. Charles Green and Chris Thoms may apply for positions outside their locals through the transfer procedures. Transfer request must be given consideration if the employee has the negotiated qualifications between the International Brotherhood of Electrical Workers and Illinois Power Company. Since Charles Green had the negotiated qualifications and is in the department, he should have been considered before Christopher Thoms. However exceptions were made for Christopher Thoms because he is white.

Even if Christopher Thoms and I wanted to apply for a position in the same local but in a different city we would

have to fill out a transfer request. See Exhibit F p. 1, and petition for rehearing p. 1-21.

If we are going to apply all rules the same and we use the same unfair group of absence records where the Courts and Illinois Power Company are comparing about three years for blacks to about two years for whites. David Long had been absent four days Gregory Boyd has been absent 12 days and Charles Green only 13 days in an 18 month period before we were denied the position of shift technician in 1996. Charles Green had been absent only 13 days in an 18-month period prior to being denied the position of electronic technician that was filled by Christopher Thoms. The Court can clearly see that David Long, Gregory Boyd and Charles Green's absence record is lower than Christopher Thoms absence record (15 days). Christopher Thoms, David Long and Gregory Boyd are White and Charles Green is Black. Therefore Illinois Power's reason is unworthy of credence and the real reason is race discrimination. See petition for rehearing p. 1-21, Article VI of the Local 51 and Illinois Power Company Agreement, See Exhibit F p. 1, and petition for rehearing p. 1-21, Murray v Archambo.

Illinois Power Company's motion for summary judgment, their affidavits in support of summary judgment and Brief for Appellee is no different from the famous saying "I did not have sexual relations with that woman." The lower courts should have ruled in favor of Charles Green and let us have a trial and see if these people really did have sexual relations with that woman or should I say let's find out if these people really did discriminate and try to cover it up by lying. See Wohl v. Spectrum Mfg., Title VII Section 2,3, & 4, McDonnell Douglas Corp. v. Green, 411 U.S. 792,802 (1973), Kline v. TVA title VII section 2000e, Lenzy McCullough v. Vernon L. Horton, Clerk; Cross County, Arkansas; State of Arkansas. Rule 8(f) provides that "[a]ll pleadings shall be so construed as to do substantial justice." Illinois Power Company and the District Court manipulated the record in

such a way as to prevent Charles Green from having a fair chance of defending himself. In sum, this court should examine the issue of whether the lower courts committed a reversible error by denying Charles Green motion to amend his pleadings, denying him an extension of time and granting Illinois Power summary judgment based on Local Rule 7.1, which clearly does not apply to pro se litigants and forcing Charles Green to pay court cost. See Murray v Archambo, Bridgeforth v Ward. An appellate hearing has been characterized as " a conscientious judicial effort to make the appellate process as good as it can be." Louisell & Degnan, supra, Rehearing In American Appellate Courts, 25 F.R.D. at 167. In the instant, case without a rehearing on this issue the appellate process will not be fair, will not be thorough, and will not be effective. The Appellate process has not been fair so far for Charles Green. See petition for rehearing p. 1-21, Article VI of the Local 51 and Illinois Power Company Agreement, The lower courts have made a decision not to publish their opinion that they feel so strong about. This is an error by the lower courts not to publish the opinion. County of Los Angeles v. Kling, 474 U.S. 936 (1985) "The district court's findings are clearly erroneous and in many instances are inconsistent." "That decision not to publish the opinion or permit it to be cited-like the decision to promulgate a rule spawning a body of secret law-was plainly wrong."

III. THIS APPEAL SHOULD HAVE BEEN REHEARD EN BANC BECAUSE IT INVOLVES QUESTIONS OF EXCEPTIONAL IMPORTANCE (IT HAS VIOLATED CHARLES GREEN'S RIGHT TO DUE PROCESS)

Whether the Appellate Court and the District Courts decisions are sending bad messages to the American people. In addition to urging that the three-judge panel that issued the opinion should rehear this appeal, Charles Green urge that this appeal be reheard en banc, all denied. See App. 3 – App. 12.

. "[I]t is essential to recognize that the question of whether a case should be heard en banc is an issue which should be considered separate and apart from the question of whether there should be a rehearing by the division [i.e., the three-judge panel']." Western Pacific Railroad Corp. v. Western Pacific Railroad Co., 345 U.S. 247, 262 (1953). See also USA vs. Dennis K. Kananahele, Gordon Ka'Aihue.

A rehearing en banc may be ordered "when the proceeding involves a question of exceptional importance." Rule 35(a)(2), Federal Rules of Appellate Procedures; see 9 Moore's Federal Practice § 235.02, at 5 n.6 (2d ed. 1966) (a rehearing en banc is appropriate when "the case is of exceptional public importance"). Not surprisingly, such rehearing may occur in cases " of a highly controversial nature," which "permit ... diverse views of the law." McFeeley, En Banc Proceedings In The United States Courts Of Appeals, 24 Idaho L. Rev. 255, 262 (1988). A ruling resolving "a controversial question" by an en banc court "obviously has much greater authority." Maris, Hearing and Rehearing Cases En Banc, 14 F.R.D. 91, 96 (1954).

There are "two general types of cases that circuit judges consider to be worthy of en banc review: (1) those holdings that may affect large numbers of persons or case; and (2) cases that interpret fundamental legal or constitutional rights." McFeeley, En Banc Proceedings In The United States Courts Of Appeals, supra, 24 Idaho L. Rev. at 265. As discussed below, Charles Green's case falls into both of those categories. The entire, peculiar course of conduct of the district court, Illinois Power Company and the appellate court in this case could reasonably be interpreted as an unfair "railroading" and "steamrollering" of Charles Green. Rule 8(f) provides that "[a]ll pleadings shall be so construed as to do substantial justice." The Fifth Amendment of the United States Constitution right to due process of law requires not only that

a trial judge be impartial, but that a trial judge also appear to be impartial. A judge whose impartiality might reasonable be questioned in a case should be recused from that case. The behavior of the judge in this case demonstrated, at the very least, the strong appearance of improper partiality. See Drake v Delta Air Lines 2nd circuit, Inc. Haines v. Kerner, 404 U.S. 519 1972 No. 70-5025, Dennett v. Hogan, 414 U.S. 12(1973), no. 72-6449, Hollis B. Memembers v Michael Paige, Et Al., 7th Circuit. Burlington Industries, Inc., Petioner v. Kimberly B. Ellerth on Writ of Certiorari to the United States for the Seventh Circuit.

FRCP 56© provides that summary judgment "shall be rendered forthwith if...there is no genuine issues as to any material fact and the moving party is entitled to a judgment as a matter of law." The District Court based their decision on Charles Green not following a rule that does not apply to pro se litigants, Local Rule 7.1 (see also Local Rule 83 of the Central District of Illinois and FRCP 83) and not because there were no genuine issue of material fact that existed. Local Rule 83,

> "(1) Each district court, acting by a majority of its district judges, may, after giving appropriate public notice an opportunity for comment, make and amend rules governing its practice." "A Local Rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments shall, upon their promulgation, be furnished to the judicial council and the Administrative Office of the United States Courts and made available to the public. (2) A Local Rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because

of a nonwillful failure to comply with the requirement."

Applying Rules 83, Local Rule 7.1 was changed to include that Local Rule 7.1 does not apply to pro se litigants. Although Local Rule 7.1 does not apply to pro se Litigants, Charles Green requested a continuance so that he could attempt to comply with the rules. Charles Green should have been given a fair opportunity to present his evidence. See Local Rule 83, Supreme Court Rule 14, Local Rule App. 6 - App. 12, FRCP 6, FRCP 83, Drake v Delta Air Lines 2nd circuit, Inc. Haines v. Kerner, 404 U.S. 519 1972 No. 70-5025, Dennett v. Hogan, 414 U.S. 12(1973), no. 72-6449, Hollis B. Memembers v Michael Paige, Et Al., 7th Circuit. Burlington Industries, Inc., Petitioner v. Kimberly B. Ellerth on Writ of Certiorari to the United States for the Seventh Circuit, Boag v. MacDougall, 454 U.S. 364 (1982), Murray v Archambo, Bridgeforth v Ward. The continuance was denied and summary judgment was granted erroneously. Charles Green should have been given the time to sort through the over 8,000 plus pages of data . Over 4,000 pages of discovery material was held in the possession of Illinois power Company through discovery. Charles Green was also forced to pay 10 cents per copy for the discovery material that was given to him just weeks before Illinois Power Company filed a motion for summary judgment. This point was raised especially at the deposition. See App. 1 _ App. 12, Rule 83 and FRCP 56, Supreme Court Rule 14.5. The appellate court affirmed the decision based on the same reason. The question posed by a summary judgment motion is not whether plaintiff can ultimately establish liability (Barr v County of Albany, 50 NY2d 247, 25; Cromme v Pioneer Homes, 216 ad2d 714, 715) but whether any genuine material fact issue exists. As courts often states, the judges function is issue-finding, not issue determination (Guzman v Haven Plaza House Dev. Fund Co.,

69 NY2d 559, 565). This rule applies both at the lower court and the appellate level.

The April 26, 1999 Order by the US Court of Appeal States in its final argument for the defendant "Green argues, for the first time on appeal, that IP failed to comply with Local Rule 7.1. By not arguing this point in the district court, Green has waived it". Boag v. MacDougall, 454 U.S. 364 (1982), Arendt v. Vetta Sports, Inc., 99 F.3d 231, 237 (7th Cir. 1996)." Illinois Power Company argued for the first time on appeal that Charles Green failed to comply with Local Rule 7.1; therefore, it should be waived. See Illinois Power's motion for summary judgment. In Illinois Power Company's motion for summary judgment, there is absolutely no way that they could have argued this point since Charles Green had not responded to the motion, and all filings after Charles Green's response to Illinois Power Company's motions for summary judgment were mooted. However, the district court abused their rights and argued the point for Illinois Power Company and by affirming the appellate court also erroneously argues for Illinois Power Company. The appellate court argues for them that Charles Green has missed over 32 days. Charles Green may accumulate and take up to 90 days of sick leave per year. Charles Green has never come close to exceeding 90 days of sick leave per year. Charles green has argued this point in days and in hours and the fact that Charles Green averaged over 300 hours of overtime per year during this time. August 14, 1998 Order and April 26, 1999 Order. Charles Green is already at a disadvantage being pro se, is now at a bigger disadvantage where it appears the district court is representing the attorney who is representing Illinois Power Company and the appellate court is representing the district court. And the court has final say. Where is Due Process for Charles Green? See Fourteenth, Fifth Amendment of the US Constitution and Title VII. We have this lawsuit because Illinois Power Company failed to follow their own policies

and give Charles Green a fair opportunity at life at the company. See Brief for Appellant p. 5-25. The District Court has failed to follow their own Local Rules and other federal rules to give Charles Green a fair chance to represent himself. Since Charles Green request a continuance according to Local Rule 6.1 and the district court could have granted a continuance according to Local Rule 6.1 and/or FRCP 56(f) and FRCP 6, See also App. 7. The district court failure to allow Charles Green a continuance has been an injustice for Charles Green and a violation of his Fifth and Fourteenth Amendment due process rights. Charles Green is entitled to a fair trial. It is very clear that Charles Green has not been given a fair opportunity to defend himself. See Charles Green v. Illinois Power Company, Local Rules 6.1, p. 1, 7.1, 83, FRCP (56) and FRCP (83) FRCP (6). Drake v Delta Air Lines 2nd circuit, Inc. Haines v. Kerner, 404 U.S. 519 1972 No. 70-5025, Dennett v. Hogan, 414 U.S. 12(1973), no. 72-6449, Hollis B. Memembers v Michael Paige, Et Al., 7th Circuit. Burlington Industries, Inc., Petitoner v. Kimberly B. Ellerthom and Kline v TVA Writ of Certiorari to the United States for the Seventh Circuit. If members of the lower courts and Illinois power Company feel so strong about their opinions and so opposed of pro se litigants, then let's start over and appoint Charles Green counsel and let's wait for the outcome.

The District Court and the Appellate Court has applied incorrect legal standards in deciding motion for summary judgment The lower courts are in conflict with their own prior decisions, other lower courts decisions and decisions by the Supreme Court. FRCP 56, Drake v Delta Air Lines 2nd Circuit, Inc. Haines v. Kerner, 404 U.S. 519 1972 No. 70-5025, Kline v. TVA and McDonnell Douglas Corp. v, Green, 411 U.S. 792,802 (1973) and Boag v. MacDougall, 454 U.S. 364 (1982), Conley v. Gibson. The court system is sending a bad message to all Americans especially minorities and those Pro se litigants who can't obtain an attorney to represent them

(no matter what you do you will not get fair justice). They are telling those company who do discriminate that it is OK because the court system will back you. See Walker v Mortham, 95-2898. See also USA vs. Dennis K. Kananahele, Gordon Ka'Aihue. The District Court claims that Charles Green did not comply with rule 7.1 is the reason why summary judgment was granted. See order by judge Bernthal. Illinois power failed to comply with Local Rule 7.1 and also failed to comply with the rules of the Appellate Court. Charles Green has argued these points. See order by Hon John L. Coffey, Circuit Judge dated January 28, 1999 p. 1 and reply brief of Charles Green p. 1-20,App. 5 p. 1, Bridgeforth v. Ward. Exceptions were made for Illinois Power Company for not complying with the Appellate Court rules. See Title VII, McDonnell Douglas Corp. v, Green, 411 U.S. 792,802 (1973) Denton v. Hernandez, 504 U. S. 25 (1992). Although Illinois Power Company's Brief was incomplete with no evidence to support their argument the Appellate Court affirmed the District Courts decision and denied Charles Green Due Process, which is a violation of the United States Constitution. See App. 5, 5th Amendment, 14th Amendment and Petition for Rehearing. Charles Green is entitled to a fair trial by jury and has demanded a fair trial in the lower courts. It is pretty obvious that the District court never intended to take Charles Green's case to trial. Charles Green has never been given a trial date. A trial date should have been scheduled long before summary judgment was granted. See Seventh Amendment, Fifth Amendment and Fourteenth Amendment to the U.S. Constitution, Lenzy McCullough v. Vernon L. Horton, Clerk; Cross County, Arkansas; State of Arkansas Conley v. Gibson, Matley v. Grasselli Chemical Co., 303 U.S. 197 (1938). Charles Green has presented specific facts to show that there is a genuine issue for trial FRCP 56(e). After examining the record and all reasonable inferences drawn therefrom in the light most favorable to Charles Green the non-moving party in this case there is no way summary judgment could be granted

to Illinois Power Company. See John Giannopoulos v. Brach & Brock Confections, Inc., an Illinois Corporation, No. 96-2230 (7th Cir.), FRCP 56 App. 5.

CONCLUSION

For the foregoing reasons this court should definitely reverse the District Court's August 14, 1998 Order granting Illinois Power motion for summary judgment and The Appellate Court's April, 26 1999 order Affirming the District Court's Order and grant judgment for Charles Green. Charles Green should be awarded maximum allowable damages for all claims listed in the record. And at this time justice will be properly served.

Respectfully Submitted,

Charles Green
Plaintiff-Appellant, Pro se
520 Monterey
Danville, IL. 61832
217-446-1724

December 15, 1999

APPENDIX A

JUDGMENT WITHOUT ORAL ARGUMENT

United States Court of Appeals
For the Seventh Circuit

Chicago, Illinois 60604

JUDGMENT – WITHOUT ORAL ARGUMENT

Date: April 26, 1999

BEFORE: Honorable JOHN L. COFFEY, Circuit Judge

Honorable ILANA D. ROVNER, Circuit Judge

Honorable TERENCE T. EVANS Circuit Judge

No. 98-3276

CHARLES L. GREEN,
Plaintiff – Appellant

v.

ILLINOIS POWER COMPANY, also known as Illinova,
Defendant – Appellee

Appeal from the United States District Court for the Central District of Illinois, Urbana Division No. 97 C 2148, David G. Bernthal, Magistrate Judge

The judgment of the District Court is AFFIRMED, with costs in accordance with the decision of this court entered on this date

(1060-110393)

APPENDIX B

APRIL 26, 1999 ORDER (SEVENTH CIRCUIT)

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Apeals
For the Seventh Circuit
Chicago, Illinois 60604
Submitted April 21, 1999*

Decided April 26, 1999

Before

Hon. JOHN L. COFFEY, Circuit Judge

Hon. ILANA D. ROVNER, Circuit Judge

Hon. TERENCE T. EVANS, Circuit Judge

CHARLES L. GREEN

Plaintiff-Appellant,

No. 98-3276

v.

ILLINOIS POWER COMPANY,
Defendant-Appellee.

Appeal from the United States District Court for the Central District of Illinois

No. 97-CV-2148

David G. Bernthal,
Magistrate Judge

ORDER

Charles Green appeals from the district court's grant of summary judgment to Illinois Power Company (IP) on his claims of employment discrimination on the basis of race. On Appeal, Green raises seventeen issues that can be grouped into the following arguments: 1)the district court abused its discretion by strictly applying Central District of Illinois Local Rule 7.1 to a pro se litigant and judgment; 2) the district court erred in finding that his claim arising from being denied paid leave was time-barred; 3) the district court erred in concluding that he ad not met his burden of showing that IP's reasons for its employment decisions were pretextual; and 4) the district court abused its discretion by not granting his motion for additional time to respond to IP" motion for summary judgment. We affirm.

After an examination of the briefs and the record, we have concluded that oral argument is unnecessary, and the appeal is submitted on the briefs and the record. See Fed.R.App.P.34(a)

IP provides gas and electrical service throughout central and southern Illinois and employs union members whose positions are governed by collective bargaining agreements with their respective local unions. In 1991, IP hired Green, who is black, as an electrician. Green belongs to the International Brotherhood of Electrical Workers (IBEW) Local 51 which has a collective bargaining agreement with IP governing the Danville, Illinois service area. Green worked as one of two journeyman substation electricians in Danville, and, until late 1995, Rod Hilburn was his supervisor.

In March 1996, Green applied for a vacant substation electronic technician position in IP's Belleville service area, which is governed by a collective bargaining agreement with IBEW Local 309/702. IP's agreement with IBEW Local 309/702, and only if no qualified member of Local 309/702 applied for the position could it be given to a non-member. A white, qualifed member of Local 309/702 did aply and was given the Belleville position. In July 1996, Green applied for vacant shift technician positions at IP's Baldwin and Wood River coal-fired power plants. IP managers at Baldwin quickly eliminated Green and two white candidates had better attendance records than Green. The Wood River managers refused to interview Green, not only because of absenteeism, but also because he lacked previous work experience in a cola-fired industrial power plant. Eventually, all the shift technician positions were filled by white canadidates.

In January 1997, Green filed charges with the Equal Employment Opportunity Commission (EEOC), alleging that IP had denied him paid leaves of absences and promotions due to his race. The EEOC issued a right-to-sue letter to Green in June 1997. In July, Green filed suit in district court against IP and its parent company, Illinova Corp., alleging disparate treatment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § § 2000e-2 and 2000e-5. Specifically, Green alleged that he was denied an electronic technician and shift technician positions due to his race and that Hilburn, his former supervisor, treated him less favorably than his fellow white substation electrician in granting paid leaves of absences. In May, the district court granted Illinova's motion for summary judgment, and Green does not appeal that order. Two months later, IP filed a separate motion for summary judgment. In granting IP's motion, the district court deemed true all of IP's undisputed facts because Green failed to comply with Local Rule 7.1; found his leave of absence claim time-barred; and held that IP offered legitimate,

nondiscriminatory reasons for not promoting Green. Green timely appealed.

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[1]The parties consented to having all proceedings conducted by a magistrate judge pursuant to 28 U.S.C. § 636(c).

II

Green first contends that the district court abused its discretion by strictly applying Local Rule 7.1 and by not considering either the 800 pages of documents he submitted in support of his opposition to IP's motion for summary judgment or his statement of undisputed facts. However, Central District of Illinois Local Rule 7.1 provides that a party opposing summary judgment must file a separate document which numerically responds to each of the movant's undisputed facts, either admitting or contesting each fact. Local Rule 7.1 further requires the opposing party to cite to discovery material or affidavits supporting the contention that the movant's fact is disputed. On three occasions during this lawsuit, defense counsel or the court provided Green with copies of Federal Rule Civil Procedure 56, Local Rule 7.1, and copies of two cases setting forth the consequences of not complying with the local rules governing summary judgment motions, Waldridge v. American Hoechst Corp., 24 F.3d 918 (7th Cir. 1994) and Schuppert v. United States, 976 F.Supp. 781 (C.D.Ill. 1997) (applying Local Rule 7.1 to a pro se litigant). In spite of these repeated admonitions, he did not respond to IP's statement of undisputed facts, nor did he support his own statement of undisputed facts with citations to the record as the rule requires. Contrary to Green's assertions,

we have repeatedly upheld a district court's strict enforcement of its rules, sustaining entry of summary judgment when the non-movant failed to file a factual statement in the form required by the pertinent rule, thereby conceding the movant's version of the facts. See, e.g., Markham v. White, ___ F.3d __, Nos. 97-3060 & 97-3086, 1999 WL 177268 (7th Cir. 1998); Waldridge v. American Hoechst Corp., 24 F.3d 918 (7th Cir. 1994). These rules also apply to uncounseled litigants. Members v. Paige, 140 F.3d 699, 702 (7th Cir. 1998). We conclude that the district court did not abuse its discretion in holding Green to the requirements of Local Rule 7.1. Id.

Green next argues that his leave of absence claim is not time-barred. Green repeatedly testified at his deposition that his supervisor Hilburn was the only person who had ever denied him paid leaves afforded his white co-worker. Hilburn ceased to be Green's supervisor in late 1995. Now Green claims that the practice of denying him paid leave while allowing his fellow white co-worker paid absences continued until November 1998, long after Hilburn transferred to a different position. But, having testified under oath as to the time-frame of his leave of absence claim, Green continued for three additional years. Cf. Piscone v. Ernst & Young, L.L.P., ___F.3d__,No.98-1923, 1999 WL 153714 (7th Cir. March 23,1 999). The leave of absence claim is time-barred because more than 300 days elapsed between the time Hilburn was Green's supervisor and when he filed charges with the EEOC. 42 U.S.C. § 2000e-5(e)(1); Fairchild v. Forma Scientific, Inc., 147 F.3d 567, 574 (7th Cir. 1998).

Green alleges that IP denied him the electronic and shift technician positions because he is black. This disparate treatment claim requires Green to prove that IP intentionally discriminated against him on the basis of race either through direct evidence or the framework announced in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). Miranda

v. Wisconsin Power & Light Co., 91 F.3d 1011, 1015 (7th Cir. 1996). "Disparate treatment occurs when a plaintiff is intentionally treated less favorably than others simply because of his race, color, religion, sex or national orgin." Bragg v. Navistar Int'l Transp. Co., 164 F.3d 373, 376 (7th Cir. 1998) (quotations omitted). Green failed to make out a prima facie case, the first prong of the McDonnell-Douglas framework, because he did not prove that he was qualified for the electronic or shift technician positions, Miranda, 91 F.3d at 1015. The electronic technician position required that Green belong to IBEW Local 309/702. He does not. Moreover, his poor attendance record rendered him unqualified for the shift technician positions at Baldwin and Wood River. Pafford v. Herman, 148 F.3d 658, 664 (7th Cir. 1998). In addition, Green does not possess the requisite coal-fired industrial plant experience for the position oat Wood River. Furthermore, as the district court found, IP's reasons for denying Green these positions—the requirements of collective bargaining agreements, excessive absenteeism and lack of experience—are legitimate and non-discriminatory. Although Green argues these reasons are pretextual, he has offered no evidence to support his contention. Thus, our de novo review, Patterson v. Chicago Association for Retarded Citizens, 150 F.3d 719, 723 (7th Cir. 1998), convinces us the district court did not err in granting IP summary judgment, Eiland v. Trinity Hospital, 150 F.3d 747, 752 (7th Cir. 1998).

Additionally, Green argues that the district court abused its discretion by denying his Rule 6(b) motion for additional time to respond to IP's motion for summary judgment. However, because he responded to IP's summary judgment motion while his Rule 6(b) motion was pending, the district court could not have abused its discretion in denying the motion as moot. Gonzalez v. Ingersoll Milling Mach. Co., 133 F.3d 1025, 1030 (7th Cir. 1998). To the extent that Green contends he needed to conduct additional discovery in order to respond to the summary judgment motion, he should have

filed an affidavit under Federal Rule of Civil Procedure 56(f) requesting more time before the court ruled on the summary judgment motion. Williams v. National R.R. Corp., 161 F.3d 1059, 1063-64 (7th Cir. 1998). Having failed to do so, we can find no error in the district court's decision. Id.

Finally, Green argues, for the first time on appeal, that IP failed to comply with Local Rule 7.1 By not arguing this point in the district court, Green has waived it. Arendt v. Vetta Sports, Inc., 99 F.3d 231, 237 (7th Cir. 1996).

For the foregoing reasons, we AFFIRM.

APPENDIX C

JANUARY 28, 1999 ORDER (INSTANTER)

United States Court of Appeals jt
For the Seventh Circuit
Chicago, Illinois 60604

January 28, 1999

Before

Hon. JOHN L. COFFEY, Circuit Judge

CHARLES L. GREEN,

Plaintiff-Appellant,

ILLINOIS POWER COMPANY,
An Illinois Corporation,

Defendant-Appellee

]Appeal from the United States
]District Court for the Central
]District of Illinois, Urbana
]Division,

]No. 97 C 2148

]David G. Bernthal,
]Magistrate Judge.

Upon consideration of the PLAINTIFF-APPELLANT RESPONSE TO DEFENDANT-APPELLEE'S MOTION FOR LEAVE TO FILE TABLE OF CONTENTS TO APPELLEE'S SUPPLEMENTAL APPENDIX (INSTANTER), which the court construes as a motion to reconsider its order of January 20, 1999, filed on January 20, 1999, by the pro se appellant,

On January 20, 1999, this court granted the appellee leave to correct an inadvertent omission in its response brief.

IT IS ORDERED that the motion is DENIED. See Seventh Circuit Operating Procedure 1 (C) (5).

APPENDIX E

GLOSSARY

"EXHIBIT A"	Charles Green's evidence presented in the District Court in opposition to Illinois Power's motion for summary judgment.
Exhibit A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X,	Charles Green's evidence presented in the district Court in opposition to Illinois Power's Motion to Strike Charles Green filings in opposition to Illinois Power's motion for summary judgment.
Tab 1- Tab 49	Evidence presented by Illinois Power to support their Motion for Summary Judgment
Para	paragraph
Exhibit A1-A50	Evidence from the record placed in the Appendix.
Exhibit EX-A TO EX-F	Charles Green's Evidence in support of Request for continuance to file Petition for rehearing and Affidavit.
Exhibit aa-yy	Charles Green's evidence in support of Charles Green Motion to strike Illinois Power Company's Brief for Appellee.
App. 1 – App. 10	Page numbers of Charles Green's filings in support of his Petition for Writ of Certiorari.located in the appendix.